

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2003-0010 FRL --]

RIN 2060-AK02

Regulation of Fuels and Fuel Additives: Modification of Baselines for Gasoline Produced or Imported for Use in Hawaii, Alaska and U.S. Territories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This final rule allows refiners and importers who produce or import conventional gasoline for use in Alaska, Hawaii, the Commonwealth of Puerto Rico and the Virgin Islands the option to change the way in which they calculate emissions from such gasoline for purposes of establishing their conventional gasoline anti-dumping and toxics performance baselines and determining compliance with their baselines.

Specifically, this final rule allows refiners and importers of gasoline sold for use in these areas to petition EPA to modify their baselines to replace the anti-dumping statutory baseline with the single seasonal statutory baseline that is most appropriate to the regional climate, and to

use the seasonal component of the Complex Model that is most appropriate to the regional climate to calculate individual baselines and annual average emissions. The rule allows refiners and importers to petition EPA to use the summer statutory baseline and the summer Complex Model for all baseline and compliance calculations for conventional gasoline produced or imported for use in Hawaii, Puerto Rico and the Virgin Islands, and allows refiners and importers to petition EPA to use the winter statutory baseline and the winter Complex Model for all baseline and compliance calculations for conventional gasoline produced or imported for use in Alaska. EPA is taking this action to address certain inconsistencies in the fuels regulations which may have significant unintended negative impacts on refiners and importers who produce or import gasoline for these areas.

DATES: This final rule is effective on [insert date 30 days after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. **EPA-HQ-OAR-2003-0010**. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone

number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

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SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

Entities potentially affected by this action include those involved with the production and importation of conventional gasoline motor fuel. Regulated categories and entities affected by this action include:

Category	NAICS Codes ^a	SIC Codes ^b	Examples of Potentially Regulated Parties
Industry	324110	2911	Petroleum Refiners, Importers

^aNorth American Industry Classification System (NAICS).

^bStandard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E, F and J of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding “FOR FURTHER INFORMATION CONTACT” section above.

B. Outline of This Preamble

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II. Anti-dumping Compliance

A. Background

1. The Anti-dumping requirements

Section 211(k) of the Clean Air Act (“CAA” or “Act”) requires EPA to establish standards for cleaner burning reformulated gasoline (RFG) to be used in specified ozone nonattainment areas. The Act also requires EPA to establish requirements for non-RFG, or conventional gasoline, designed to prevent refiners from “dumping” into conventional gasoline the dirty gasoline components that are removed when RFG is produced. The requirements for conventional gasoline are called “anti-dumping” requirements. To be in compliance with these requirements, the exhaust toxics and nitrogen oxides (NOx) emissions performance of a refinery or importer’s conventional gasoline must be no dirtier than the refinery’s or importer’s 1990 exhaust toxics and NOx emissions performance, on an annual average basis.

The anti-dumping regulations require refiners to calculate the exhaust toxics and NOx emissions performance of gasoline using a predictive model, called the Complex Model. *See* 40 CFR 80.45. The Complex Model has a summer version and a winter version.¹ For the same

¹The summer Complex Model is based on data reflecting the performance of gasoline sold in the summer; i.e., gasoline with lower RVP to comply with volatility requirements at 40 CFR 80.27 and which is typical of summer climatic conditions. The winter Complex Model is a modified version of the summer model which sets the

fuel composition (based on those fuel parameters evaluated in the Complex Model), the winter Complex Model predicts significantly higher emissions of exhaust toxics and NO_x than the summer Complex Model, on a mg/mile basis.

The anti-dumping regulations require refineries and importers of conventional gasoline to comply with an established baseline for exhaust toxics and NO_x. The baseline is either an “individual baseline” or the “anti-dumping statutory baseline.” An individual baseline is based on the average performance of the gasoline that the individual refinery or importer produced or imported during the calendar year 1990. The anti-dumping statutory baseline is based on the average quality of gasoline sold throughout the United States during 1990. The anti-dumping statutory baseline applies to refineries and importers that are unable to calculate an individual baseline based on 1990 gasoline performance. If a refinery or importer has an individual baseline, gasoline production during a given annual averaging period, up to the refinery’s or importer’s 1990 production or import volume, must be no “dirtier” than the refinery’s or importer’s individual 1990 baseline for exhaust toxics and NO_x. Gasoline produced or imported during the annual averaging period in excess of the refinery’s or importer’s 1990 gasoline production or import volume must be no dirtier than the anti-dumping statutory baseline for exhaust toxics and NO_x. For refineries and importers that do not have an individual baseline, all gasoline produced or imported during the annual averaging period must meet the anti-dumping statutory baseline for exhaust toxics and NO_x.

RVP at 8.7 psi and adjusts for winter climate conditions. A detailed discussion of the development of the summer and winter versions of the Complex Model is included in the Final Regulatory Impact Analysis for Reformulated Gasoline (December 13, 1993). Public Docket No. A-92-12.

To comply with the anti-dumping requirements, each refinery and importer must evaluate the overall quality of the conventional gasoline that it produces or imports during each annual averaging period and compare it to the refinery's or importer's baseline (individual 1990 baseline or anti-dumping statutory baseline, as appropriate). So long as the conventional gasoline produced or imported has overall emissions, as calculated by the Complex Model, that are no worse than the performance reflected in the refinery's or importer's baseline, the refinery or importer is in compliance with EPA's anti-dumping requirements.

The anti-dumping statutory baseline includes both summertime and wintertime seasonal components. The anti-dumping statutory baseline, which approximates the average emissions of gasoline sold in the U.S. in 1990, is the volume-weighted average of the summertime and wintertime 1990 baseline gasoline emissions, as calculated using the appropriate seasonal version of the Complex Model. *See* 59 FR 7793 (February 16, 1994).²

2. Calculating Individual Baselines and Annual Average Emissions

A refinery's or importer's individual 1990 baseline is calculated using the summer version of the Complex Model to assess the performance of the refinery's or importer's 1990 summer gasoline and the winter version of the Complex Model to assess the performance of the refinery's or importer's 1990 winter gasoline. For purposes of these calculations, the regulations consider summer gasoline to be gasoline that is subject to EPA's volatility requirements, and

² For a discussion of the methodology used in determining the anti-dumping statutory baseline, see 56 FR 31179 (July 9, 1991).

winter gasoline to be gasoline that is not subject to EPA's volatility requirements. 40 CFR 80.91(e)(2)(ii)(A). Gasoline sold in Alaska and Hawaii, and in the territories of Puerto Rico and the Virgin Islands, is not subject to the volatility requirements. *See* CAA Section 211(h)(5).³ Thus, for purposes of calculating a refinery's or importer's individual 1990 baseline emissions, none of the gasoline produced or imported for use in these areas is summer gasoline under the current regulations. As a result, all of the gasoline produced or imported for use in these areas was evaluated using the winter Complex Model for purposes of calculating individual 1990 baseline emissions.

Similarly, to determine annual average emissions for compliance purposes, each year refineries and importers calculate emissions from their summer gasoline using the summer Complex Model and emissions from their winter gasoline using the winter Complex Model. For purposes of calculating annual average emissions, the regulations specify that summer gasoline is gasoline that meets the volatility requirements and winter gasoline is gasoline that does not meet the volatility requirements. 40 CFR 80.101(g)(5) and (g)(6). Because gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands is not subject to the volatility requirements, refineries and importers currently are required to evaluate all of their

³The U.S. territories of Guam, the Commonwealth of the Northern Mariana Islands and American Samoa also are not subject to the volatility requirements pursuant to CAA section 211(h)(5), however, these territories have received exemptions from the anti-dumping requirements. *See* 61 FR 53854 (October 16, 1996)(Guam); 62 FR 63853 (December 3, 1997)(Northern Mariana Islands); 65 FR 71067 (November 29, 2000)(American Samoa). Gasoline produced or imported for use in Guam, the Commonwealth of the Northern Mariana Islands and American Samoa is also exempt from the Mobile Source Air Toxics requirements. *See* 40 CFR 80.820(d). As a result, gasoline produced or imported for use in these areas is not affected by today's rule.

gasoline produced or imported for use in these areas during the annual averaging period using the winter Complex Model.⁴

As discussed above, refiners and importers must provide gasoline that complies with their individual anti-dumping baseline up to their 1990 baseline volume, after which any excess volumes must comply with the anti-dumping statutory baseline.⁵ Refiners and importers without an individual baseline must comply with the anti-dumping statutory baseline for all of the conventional gasoline they produce or import during each annual averaging period.⁶ This general approach to compliance applies to both refiners and importers of gasoline sold in the continental U.S. and refiners and importers of gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands.

B. Need for Action

⁴Pursuant to a rulemaking on June 9, 1999 (64 FR 30904), refiners and importers who have Puerto Rico gasoline, or Puerto Rico and Virgin Islands gasoline, in their individual baseline are allowed to petition EPA to replace the winter Complex Model with the summer Complex Model for anti-dumping baseline and compliance calculations. *See* 40 CFR 80.93(d) and 80.101(f)(4)(iii) and (g)(1)(ii)(B).

⁵For refineries and importers with individual 1990 baselines who produce gasoline volumes in excess of their 1990 volume during an averaging period, the regulations require the use of a specified “compliance baseline” equation. 40 CFR 80.101(f). In general, this equation adjusts the refinery’s or importer’s individual baseline to reflect the parameter values of the statutory baseline for that volume of the refinery’s or importer’s total annual gasoline production which is in excess of the refinery’s or importer’s 1990 baseline volume. This adjusted compliance baseline then is the refinery’s or importer’s anti-dumping standard for that annual averaging period, and the annual average emissions from all conventional gasoline produced by that refinery or importer during the annual averaging period must meet that standard.

⁶Since most importers are unable to establish an individual 1990 baseline, importers generally are required to comply with the anti-dumping statutory baseline.

As discussed above, under the anti-dumping regulations, gasoline produced or imported in excess of a refinery's or importer's 1990 baseline volume during the annual averaging period must comply with the anti-dumping statutory baseline. All gasoline produced or imported during each annual averaging period by refineries and importers who are unable to establish an individual baseline also must comply with the anti-dumping statutory baseline. In most cases, use of the anti-dumping statutory baseline is an appropriate and necessary tool to ensure that conventional gasoline quality does not degrade in comparison to the average quality of gasoline sold in 1990. However, for gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands that is subject to the anti-dumping statutory baseline, the current anti-dumping requirements can result in an inconsistent application of EPA's seasonal Complex Models.

As discussed above, the anti-dumping statutory baseline is an estimate of the average quality of all 1990 gasoline. This estimate was calculated using the summer Complex Model to evaluate "summer" gasoline and the winter Complex Model for all other gasoline. Similarly, for compliance purposes, summer conventional gasoline sold in the continental United States is evaluated using the summer Complex Model, and all other conventional gasoline is evaluated using the winter Complex Model. Thus, for conventional gasoline subject to the anti-dumping statutory baseline that is sold in the continental U.S., we expect there to be general agreement between the seasonal models used to develop the baseline and the seasonal models used to evaluate annual compliance. Application of the anti-dumping statutory baseline for such gasoline provides reasonable assurance that the quality of the conventional gasoline will not degrade relative to the average quality of gasoline in 1990.

Like gasoline produced or imported for use in the continental United States, gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands in excess of the refinery's or importer's 1990 baseline volume of gasoline, and all gasoline produced or imported for use in these areas by a refiner or importer who does not have an individual baseline must comply with the anti-dumping statutory baseline. However, since the annual emissions performance of all gasoline produced or imported for use in these areas must be evaluated using only the *winter* Complex Model, for these areas there is not an agreement between the seasonal models reflected in the statutory baseline (which, as discussed above, was developed using both the summer and winter seasonal models) and the seasonal model used for calculating annual compliance.⁷ Because the winter Complex Model predicts higher emissions than the summer Complex Model, in these situations, the refinery or importer is required to comply with a standard that, in effect, is more stringent than intended. That is, the refiner or importer must produce or import gasoline that is actually cleaner than the average gasoline produced or imported for use in 1990.⁸ This unintended result can have a significant adverse economic effect on those refineries and importers whose baselines include gasoline produced or imported

⁷ Gasoline produced or imported for Alaska, Hawaii, Puerto Rico and the Virgin Islands was evaluated using only the winter Complex Model for purposes of calculating a refinery's or importer's individual 1990 baseline. Since annual production or imports for these areas is also evaluated using the winter Complex Model, there is a general agreement between the seasonal model used to develop the baseline and the seasonal model used to calculate annual emissions for gasoline production or imports up to the refinery's or importer's individual 1990 baseline volume of gasoline produced or imported for these areas.

⁸ Because the winter Complex Model predicts higher emissions for exhaust toxics and NO_x than the summer Complex Model, the average emissions of gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands during an annual averaging period, which is evaluated using only the winter Complex Model, will appear to have higher emissions than that same gasoline would appear to have if evaluated using the summer Complex Model for some of the volume of gasoline. If, for example, gasoline produced or imported for use in these areas has properties identical to the properties of anti-dumping baseline gasoline, that gasoline (as evaluated using only the winter Complex Model) will appear to have higher emissions than anti-dumping baseline gasoline, and would be deemed out of compliance with the anti-dumping statutory baseline emissions standard.

for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands and who have increased the volume of gasoline that they produce or import for these areas above their 1990 baseline volumes of gasoline produced or imported for these areas, and those refineries and importers who are subject to the anti-dumping statutory baseline for all of their gasoline.

C. NPRM

In the NPRM, EPA proposed to correct this inconsistency in the anti-dumping regulations by allowing gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands to be compared to a baseline that is seasonally consistent with the compliance model that is used for purposes of compliance evaluation. Specifically, EPA proposed the following changes for refiners and importers who produce or import conventional gasoline for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands.

First, EPA proposed to allow refiners and importers to petition EPA to change their baselines such that any gasoline produced or imported for use in these areas that is currently subject to the anti-dumping statutory baseline instead would be subject to the single seasonal component of the anti-dumping statutory baseline that agrees with the single seasonal model used for compliance. This approach alleviates the current inconsistency (as described above) by more accurately comparing the performance of the refiner's or importer's average 1990 gasoline with gasoline currently produced.

Second, EPA proposed that any refiner or importer for whom a petition to change its baseline has been approved must use the single seasonal statutory baseline that is most appropriate to the regional climate for any gasoline that is not subject to an individual 1990 baseline, and use the seasonal component of the Complex Model that is most appropriate to the regional climate for calculating both 1990 individual baseline emissions and annual average emissions. Thus, refiners and importers with an approved petition that produce or import gasoline for use in Hawaii, Puerto Rico and the Virgin Islands would use the summer statutory baseline component for any gasoline not subject to an individual baseline, and use the summer Complex Model for purposes of calculating 1990 individual baseline and annual average emissions. Refiners and importers with an approved petition that produce or import gasoline for use in Alaska would use the winter statutory baseline for any gasoline not subject to an individual baseline, and use the winter Complex Model for purposes of calculating 1990 individual baseline and annual average emissions. A discussion of the rationale for these seasonal determinations is contained in the preamble to the NPRM. *See* 70 FR 646 (January 4, 2005).

Under this approach, refiners and importers of gasoline produced or imported for use in Hawaii, Puerto Rico and the Virgin Islands would need to establish a separate individual 1990 baseline for gasoline produced or imported for use in these areas using only the summer Complex Model. Gasoline produced or imported for use in these areas would be required to comply with this new individual baseline for gasoline up to the refinery's or importer's 1990 baseline volume of gasoline produced or imported for these areas. Gasoline production or imports in excess of the refinery's or importer's 1990 baseline volume would be subject to only

the summer component of the statutory baseline. In the case of refiners and importers with an individual 1990 baseline which does not include any gasoline produced or imported for use in these areas, any gasoline produced or imported for use in these areas during the annual averaging period would be subject to the refinery's or importer's individual summer 1990 baseline, and the summer Complex Model would be used for all compliance calculations. Such gasoline will not be considered in determining whether a refiner or importer has produced or imported any incremental gasoline volumes above the refinery's or importer's 1990 baseline volume.

Similarly, refiners and importers of gasoline produced or imported for use in Alaska would need to establish a separate individual 1990 baseline for gasoline produced or imported for use in Alaska using only the winter Complex Model. Gasoline produced or imported for use in Alaska would be required to comply with this individual baseline up to the refinery's or importer's 1990 baseline volume of Alaska gasoline. Gasoline produced or imported for use in Alaska in excess of the refinery's or importer's 1990 baseline volume of Alaska gasoline would be subject to only the winter component of the statutory baseline. Refiners and importers of gasoline produced or imported for use in Alaska would continue to use the winter Complex Model for all compliance calculations for Alaska gasoline. In the case of refineries and importers with an individual 1990 baseline that does not include any gasoline produced or imported for use in Alaska, any gasoline produced or imported for use in Alaska during the annual averaging period would be subject to the refinery's or importer's individual winter 1990 baseline, and the winter Complex Model would be used for all compliance calculations. Such gasoline will not be considered in determining whether a refiner or importer has produced or

imported any incremental gasoline volumes above the refinery's or importer's 1990 baseline volume.

To implement the changes described above, EPA proposed to modify the individual baseline submission provisions at § 80.93(d) to allow refineries and importers that produce or import gasoline for use in Hawaii, Puerto Rico and the Virgin Islands the option to petition EPA to recalculate the emissions of their 1990 conventional gasoline produced or imported for use in these areas using the summer Complex Model.⁹ For refiners and importers who produced or imported gasoline in 1990 for use in both the continental U.S. and an affected area, this would require the calculation of a separate 1990 individual baseline for gasoline produced or imported for use in these areas, and recalculation of the refiner's or importer's current anti-dumping baseline (which would continue to be used for compliance purposes for gasoline produced or imported for other areas) to reflect the subtraction of baseline gasoline produced or imported for use in Hawaii, Puerto Rico and the Virgin Islands.¹⁰ As discussed above, under the current

⁹As discussed in footnote 4 above, in a final rule dated June 9, 1999 (64 FR 30904), EPA modified the anti-dumping regulations to allow refiners and importers who have Puerto Rico gasoline, or Puerto Rico and Virgin Islands gasoline, in their 1990 baseline to petition EPA to replace the winter Complex Model with the summer Complex Model for purposes of compliance calculations. Today's rule does not substantively change the provisions for Puerto Rico gasoline promulgated on June 9, 1999. Rather, today's rule extends the use of the summer only Complex Model to Puerto Rico gasoline produced or imported by refiners and importers that do not have individual baselines and those that have an individual baseline but do not have any Puerto Rico gasoline, or Puerto Rico and Virgin Islands gasoline, in their baselines.

¹⁰For refineries and importers with individual baselines that produce or import gasoline for the continental U.S. as well as Alaska, Hawaii, Puerto Rico or the Virgin Islands, the approach in today's rule likely would result in a reduction of the total volume of gasoline that currently would be subject to the anti-dumping statutory baseline, since gasoline produced or imported for Alaska, Hawaii, Puerto Rico or the Virgin Islands in excess of the refinery's or importer's baseline volume of gasoline for these areas would no longer be included in the volume of gasoline subject to the anti-dumping statutory baseline. This may have an impact on the refinery's or importer's compliance baseline for the annual averaging period.

regulations, the winter Complex Model is required to be used to evaluate Alaska gasoline for purposes of establishing the individual 1990 baseline and for determining annual average compliance. Since the winter Complex Model is the appropriate seasonal model for Alaska, we did not propose to change this requirement, however, we did propose to clarify this requirement in the baseline submission provisions in §80.93(d). Under the proposal, refiners and importers who produced or imported gasoline in 1990 for use in both the continental U.S. and Alaska would be required to calculate a separate baseline for Alaska gasoline and recalculate their current anti-dumping baseline for use with other gasoline to reflect the subtraction of 1990 baseline Alaska gasoline. EPA also proposed to revise the anti-dumping compliance baseline provisions at § 80.101(f)(3) and (f)(4)(iii). EPA proposed a new (f)(3) which establishes compliance baselines for refiners and importers with 1990 individual baselines that did not include any gasoline produced or imported for use in the affected areas. As discussed above, for these refiners and importers, any conventional gasoline produced or imported for use in the affected areas would be subject to the refiner's or importer's appropriate seasonal individual baseline. EPA proposed to revise §80.101(f)(4)(iii) to provide equations for calculating a compliance baseline for refiners and importers with individual 1990 baselines that have approved petitions and that produce or import gasoline for use in one or more of the affected areas.

The proposed modifications of the baseline submission provisions at § 80.93(d) also would allow refiners and importers currently subject to the anti-dumping statutory baseline for all of their gasoline (i.e., parties without a 1990 individual baseline) the option to petition EPA to change their baseline to only the summer component of the statutory baseline for any conventional gasoline produced or imported for use in Hawaii, Puerto Rico and the Virgin

Islands, and the winter component of the statutory baseline for any conventional gasoline produced or imported for use in Alaska. EPA proposed to modify §80.101(f)(2) to require such refiners and importers to comply with the summer statutory baseline component for gasoline produced or imported for use in Hawaii, Puerto Rico and the Virgin Islands, and the winter statutory baseline component for gasoline produced or imported for use in Alaska. In addition, EPA proposed to modify §80.101(g)(1) to require refiners and importers with approved petitions under § 80.93(d) to evaluate all of their gasoline produced or imported for use in Hawaii, Puerto Rico and the Virgin Islands during the annual averaging period using only the summer Complex Model, and clarify that gasoline produced or imported for use in Alaska during the annual averaging period must be evaluated using only the winter Complex Model.

A refiner or importer that produces or imports gasoline for Alaska and also for Hawaii and/or Puerto Rico and/or the Virgin Islands, and that wishes to change its baseline for all of these areas, would submit separate petitions, one for Alaska gasoline under §80.93(d)(1) and one for Hawaii, Puerto Rico and the Virgin Islands gasoline under §80.93(d)(2). In this case, the refiner or importer would have two separate baselines, one for gasoline produced or imported for Alaska, and one for gasoline produced or imported for Hawaii, Puerto Rico and the Virgin Islands. Such refiner or importer would also have another separate baseline for any gasoline produced or imported for the continental United States.

In addition to the proposed changes to the anti-dumping regulations discussed above, EPA proposed conforming changes to §§ 80.91(e)(2)(ii)(A), and 80.101(g)(2) and (g)(6) to

clarify the summer/winter distinction with regard to gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands.

EPA proposed that the changes would be optional for any refiner or importer that produces or imports gasoline intended for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands, and would be limited to those refiners and importers that petition the Agency for these changes. However, EPA proposed that a refiner or importer that changes from the anti-dumping statutory baseline to a single statutory baseline component must use the appropriate *seasonal* statutory baseline component and must use it for all gasoline produced or imported for use in any of the areas subject to this rule. Such refiner or importer must use the appropriate seasonal Complex Model for all future calculations. For example, an importer of Puerto Rico gasoline that petitions EPA to change from the anti-dumping statutory baseline to a single seasonal statutory baseline component must change to the summer statutory baseline component and must use the summer Complex Model for all future calculations for Puerto Rico gasoline and also for any gasoline the importer imports into Hawaii and/or the Virgin Islands. Refiners and importers with approved petitions whose 1990 individual baselines include gasoline produced or imported for these areas would be required to recalculate their individual baselines, as described above, and submit the new baselines with their petition.

EPA proposed to require refiners and importers that change their baseline in accordance with the proposed rule to retain documents which substantiate that gasoline complying with the new baseline, in fact, was produced or imported for use in the affected area.

EPA proposed that refiners and importers of gasoline produced or imported for use in the affected areas who do not petition EPA to change their baselines would continue to be subject to their current baselines and would continue to use the Complex Model that is required for calculating emissions under the current regulations.

III. Mobile Source Air Toxics Rule (MSAT) Compliance

A. Background

The Mobile Source Air Toxics (MSAT) rule published on March 29, 2001, contains provisions which require refiners and importers to determine a baseline and compliance value for air toxics. *See* 40 CFR Part 80, subpart J. A refiner, for each refinery, and an importer must identify the appropriate toxics performance baseline for its conventional gasoline and its reformulated gasoline. The refiner or importer must then demonstrate compliance with each applicable baseline on an annual average basis using the Complex Model.

Under the MSAT toxics performance rule, refiners, for each refinery, and importers are required to produce or import gasoline that is no dirtier than the gasoline they produced or imported during the baseline period, 1998 through 2000. Accordingly, refiners and importers are required to establish an individual toxics baseline, separately for RFG and conventional gasoline, based on the average toxics performance of their gasoline during the baseline period. Refiners and importers are also required to establish a total baseline volume based on their volume of gasoline production during the baseline period. If a refinery or importer did not have sufficient

production or imports during the baseline period to calculate an average toxics performance for their gasoline, they are subject to a default toxic baseline established by EPA. Refineries or importers subject to the default baseline do not have an MSAT baseline volume.

Compliance with the MSAT toxics performance requirements is determined on an annual average basis. The gasoline produced or imported during the annual averaging period can be no more polluting than the refiner's or importer's baseline level for that type of gasoline (RFG or conventional). For RFG, total toxics emissions are evaluated, and toxics performance is reported as a percent reduction from the statutory baseline. For conventional gasoline, only exhaust toxics emissions are evaluated, and toxics performance is reported in mg/mile. Any volume produced or imported in excess of a refiner's or importer's individual baseline volume can be no more polluting than the RFG toxics standard, or the refiner's or importer's conventional gasoline anti-dumping toxics baseline level, as applicable.

B. NPRM

EPA proposed to modify the MSAT toxics performance requirements in a manner that is consistent with the changes that were proposed for the conventional gasoline anti-dumping program. The changes to the MSAT requirements are necessary because, generally, the MSAT toxics performance provisions applicable to conventional gasoline are of the same form as the anti-dumping provisions, and because such changes are needed to maintain agreement between methods used to establish baselines and those used to evaluate gasoline performance for purposes of compliance. Thus, we proposed to require a refiner or importer that submits a

petition under the anti-dumping program as described in the NPRM to also petition for a separate or modified MSAT baseline applicable to gasoline produced or imported into Alaska and/or Hawaii, Puerto Rico, and the Virgin Islands.

EPA proposed the following MSAT baseline and compliance determinations for refiners and importers who submit petitions under this rule for gasoline produced or imported for use in Alaska and/or Hawaii, Puerto Rico and the Virgin Islands.

Affected parties who did not produce or import any gasoline during the baseline period (1998-2000), may petition EPA to have the appropriate seasonal MSAT conventional gasoline default baseline for gasoline produced or imported for use in Alaska and/or Hawaii, Puerto Rico, and the Virgin Islands, and use the appropriate seasonal version of the Complex Model for evaluating gasoline produced or imported for these areas. Such parties would be subject to the annual MSAT conventional gasoline default baseline for all other gasoline produced or imported (i.e., gasoline for use in the continental U.S.)

Affected parties who produced gasoline during the baseline period, but who did not produce or import gasoline for Alaska and/or Hawaii, Puerto Rico, or the Virgin Islands during the baseline period, may petition EPA to have the appropriate individual refinery or importer conventional gasoline seasonal MSAT baseline for these areas, and evaluate any gasoline produced or imported for use in these areas using the appropriate seasonal Complex Model. Such gasoline will not be considered in determining whether a refiner or importer has produced

or imported any incremental gasoline volumes above the refiner's or importer's MSAT baseline volume.

Affected parties who only produced or imported gasoline for Alaska and/or Hawaii, Puerto Rico, or the Virgin Islands during the baseline period may petition EPA for a revised MSAT baseline using the appropriate seasonal version of the Complex Model, and use the appropriate seasonal version of the Complex Model for all compliance determinations for such gasoline. Gasoline produced or imported for use in these areas up to the refiner's or importer's MSAT baseline volume would be subject to the refiner's or importer's seasonally appropriate MSAT baseline. Any incremental volumes above the baseline volume would be subject to the refiner's or importer's appropriate seasonal anti-dumping baseline. Any gasoline produced or imported for use in the continental U.S. would be subject to the annual MSAT conventional gasoline default baseline.

Affected parties who produced or imported gasoline during the baseline period for use in the continental U.S. and for use in Alaska and/or Hawaii, Puerto Rico, or the Virgin Islands may petition EPA to have a separate, seasonally appropriate MSAT baseline and a separate MSAT baseline volume for gasoline produced or imported for use in Alaska and/or Hawaii, Puerto Rico, and the Virgin Islands. Such refiners or importers must then use the appropriate seasonal component of the Complex Model to evaluate gasoline sold in these areas. Additionally, such refiners must establish a separate annual baseline and baseline volume for all other gasoline, which must be evaluated using the annual Complex Model.

Under the current regulations, refiners and importers who produce or import gasoline for use in Alaska, and/or Hawaii, Puerto Rico or the Virgin Islands who are subject to the MSAT default baseline are, in fact, required to produce or import gasoline that is cleaner than the national annual average during the MSAT baseline period. This is because the MSAT default baseline was determined using both seasonal components of the Complex Model, while parties in the affected areas are required to evaluate their gasoline using only the winter Complex Model (which, as discussed above, gives higher emission values for the same gasoline than if the gasoline were evaluated using both seasonal components of the model). EPA proposed to correct this inconsistency while continuing to require such parties to produce or import gasoline that is no more polluting than the average gasoline during the MSAT baseline period, as required under the MSAT rule. Similarly, parties with individual MSAT baselines will continue to meet the requirements under the MSAT rule for gasoline produced or imported up to their baseline volume, without being required to produce or import gasoline that is cleaner than their average gasoline during the MSAT baseline period.

For parties with an individual MSAT baseline who produce or import gasoline in excess of their MSAT baseline volume, the MSAT regulations require the excess volume to meet the refiner's or importer's standard under the anti-dumping rule (i.e., excess volume may not be more polluting than the refiner's or importer's individual anti-dumping baseline level). Therefore, EPA proposed that gasoline produced or imported in excess of the MSAT baseline volume be subject to the anti-dumping baseline that is established for purposes of anti-dumping compliance under today's rule.

To implement the changes described above, EPA proposed appropriate modifications to §§80.825, 80.850, 80.855, 80.910 and 80.915 of subpart J.

IV. Comments on the NPRM

Comments on the NPRM were generally very favorable. One commenter suggested that we clarify the regulations regarding the effective date for petitions granted under the rule, and that we clarify whether there is a deadline for submitting a petition. In the NPRM we proposed that the baseline and compliance method changes in today's rule would become effective beginning with the annual averaging period in which a refiner's or importer's petition is granted. As a result, a petition may be submitted at any time during an annual averaging period. Once a petition is granted, the new method for determining compliance with the anti-dumping and air toxics requirements will apply beginning with the annual averaging period in which the petition was granted, and will continue to apply in each annual averaging period thereafter. As discussed in the NPRM, once a petition has been granted, the refinery or importer will not be able to revert back to its original baseline. The new baseline will apply to the refinery regardless of ownership; i.e., if a refinery obtains a new baseline under today's rule, the new baseline will apply to the refinery even if the refinery is subsequently sold to another refiner. We have added language in the final rule to clarify when a petition may be submitted and the effective date of an approved petition.

Another commenter believes that the default toxics baselines in §80.855(b)(2) (i.e., the seasonal default toxics baselines applicable to parties with approved petitions under §80.93(d))

should apply only to refiners that submit petitions under §80.93(d) after this rule is finalized. A refiner who previously received approval to use the summer Complex Model under §80.93(d), and who was unable to establish an individual toxics baseline under the MSAT rule, currently is subject to the conventional gasoline MSAT default toxics baseline. The rule as proposed would apply a more stringent default toxics baseline (i.e., seasonal default baseline) to such a refiner, which, the commenter believes, would impose a burden on the refiner that was not anticipated at the time the refiner applied for use of the summer Complex Model under §80.93(d).

The default baselines in §80.855(b)(2) are the average seasonal toxics levels during the MSAT baseline years calculated using the appropriate seasonal Complex Model. As discussed above, where a refiner uses a seasonal Complex Model for annual average compliance calculations, we believe it is appropriate for the refiner to also be subject to the appropriate seasonal default baseline. A refiner with a previously approved baseline change under §80.93(d) (which as noted above applies to refiners who produce gasoline for use in Puerto Rico) uses the summer Complex Model for calculating its annual average toxics emissions. Therefore, we believe it is appropriate for the summer MSAT default baseline in §80.855(b)(2)(ii) to apply to such a refiner. However, since refiners with previously approved petitions under §80.93(d) have been using the conventional gasoline default toxics baseline under the current regulations, we believe that the summer default baseline in §80.855(b)(2)(ii) should only apply to such refiners prospectively, and that such refiners should be afforded the opportunity to withdraw their petitions under §80.93(d). As a result, we have included provisions in the final rule which specify that the appropriate seasonal default toxics baseline would apply to any refiner with a previously approved petition under §80.93(d) beginning with

the 2008 annual averaging period, and that any such refiner may petition EPA to withdraw approval of its petition under §80.93(d) beginning with the 2008 annual averaging period. Although these provisions were not included in the NPRM, we believe they are necessary in order to clarify the application of the provisions in §80.855(b)(2) with regard to parties with previously approved petitions, and are a logical outgrowth of the proposal to apply the seasonal default toxics baselines in §80.855(b)(2) to any refiner with a previously approved petition under §80.93(d).

Another commenter suggested that we clarify that a refiner or importer that produces or imports gasoline for Alaska and also for Hawaii, and/or Puerto Rico and/or the Virgin Islands would have two separate baselines and baseline volumes under today's rule, one for gasoline produced or imported for Alaska, and one for gasoline produced or imported for Hawaii, Puerto Rico and the Virgin Islands. We have added language to clarify this in today's final rule

One commenter suggested that we clarify the requirements for new refineries or importers in the final rule. As discussed above, the rule provides an alternative to the existing regulatory baseline and compliance requirements for gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands. Any new refinery or importer (which would not have an individual anti-dumping or MSAT baseline) would be subject to the anti-dumping statutory and MSAT default baselines, unless the refiner or importer petitions EPA under the provisions of today's rule to have the appropriate seasonal anti-dumping and MSAT baselines and seasonal Complex Model apply. We have added a provision to clarify the regulations in this regard.

One commenter requested that we make certain references to §80.93(d) in the regulations more specific with regard to the subparagraphs being referenced. We have made these changes in today's final rule.

V. Final Rule

With the exceptions noted above and minor editorial changes, today's rule finalizes the provisions in the NPRM as proposed.

Although the current anti-dumping and MSAT toxics performance requirements will be superseded by more stringent mobile source emissions controls by 2011, we believe it is appropriate to provide this relief to the affected parties at this time in order to address the inequity caused by the inconsistencies in the current regulations and to avoid any gasoline supply problems that may result from this inequity.

VI. Environmental Effects of This Action

As discussed in the NPRM, we believe that allowing refiners and importers to change their baselines in accordance with today's rule will not undermine the environmental goals of the anti-dumping program (i.e., to ensure that conventional gasoline will be no dirtier than 1990 gasoline), or the MSAT toxics performance rule (i.e., to ensure that gasoline, RFG and conventional, will be no dirtier than gasoline during the MSAT baseline years.) The changes in

today's rule will not result in gasoline with exhaust toxics or NO_x emissions that are greater than conventional gasoline in these areas, or nationwide, compared to 1990 levels, or toxics emissions that are greater than gasoline in these areas, or nationwide, compared to the MSAT baseline years. Today's rule provides an alternative compliance method for refiners and importers who, under the current regulations, are required to produce or import gasoline for use in the affected areas that is actually cleaner than that required under the anti-dumping and MSAT programs. As a result, even if all of these affected parties choose the new compliance method, the goals of the anti-dumping and MSAT programs would be met. To the extent that parties choose to retain their current compliance method, there would continue to be an added environmental benefit above and beyond that specifically required to meet the goals of these programs.

VII. Public Participation

In the NPRM, we requested comment on the need to take this action and the proposed changes to the regulations. We have reviewed and considered all comments. The comments and EPA's responses to the comments are discussed above.

VIII. Statutory and Executive Order Reviews

A. *Executive Order 12866: Regulatory Planning and Review*

This action is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The information collection requirements are not enforceable until OMB approves them.

This final rule addresses certain adverse impacts on refiners and importers of conventional gasoline under the current fuels regulations, and provides refiners and importers with additional flexibility to comply with the regulations. The flexibility afforded under this rule is optional. Modest information collection requirements in the form of a one-time only petition to EPA and minimal recordkeeping requirements are required of those refiners who wish to avail themselves of the flexibility provided in this rule.

The estimated hour burden for this rule is 20 hours per petition. The estimated number of petitions is 10. The estimated cost burden for the petition is \$70 per hour. The total estimated cost for each respondent is \$1,400. The total estimated cost for all respondents is \$14,000. We do not anticipate that any burdens will be associated with the additional recordkeeping requirements, since the information required to be retained normally is included on business documents retained by refiners and importers.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the Federal Register to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of

small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's regulations at 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final rule provides provisions intended to address existing adverse economic impacts of the current rule on certain refiners and importers while continuing to promote

successful implementation of the requirements for conventional gasoline. Specifically, this rule provides all affected refiners and importers, including small refiners and importers, options for evaluating the emissions of conventional gasoline, which will have the effect of relieving regulatory burden. We have therefore concluded that today's final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of

the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year that will result in expenditures of \$100 million or more. This rule affects gasoline refiners and importers of conventional gasoline by providing optional provisions for evaluating the emissions of conventional gasoline in certain situations. This rule will have the effect of reducing the burden of the conventional gasoline regulations on these regulated parties. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule provides options for evaluating the emissions of conventional gasoline. The requirements of the rule will be enforced by the federal government at the national level. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today’s action finalizes certain modifications to the federal requirements for conventional gasoline, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045: "Protection of Children from Environmental health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not economically significant and does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Acts that Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the

rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U. S. Senate, the U. S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A “major rule” cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(a). This rule will be effective on [insert date 30 days after publication in the Federal Register].

K. Clean Air Act Section 307(d)

This rule is subject to Section 307(d) of the CAA. Section 307(d)(7)(B) provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for the EPA to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to the EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460, with a copy to both the person(s) listed in the preceding FOR FURTHER INFORMATION CONTACT section, and the Director of the

Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, D.C. 20004.

IX. Statutory Provisions and Legal Authority

The statutory authority for the actions finalized today comes from section 211(c) and (k) of the CAA (42 U.S.C. 7545(c) and (k)), which allows us to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impairs emission control equipment. Additional support for the procedural aspects of the fuels controls in today's final rule, including the petition requirement, comes from sections 114(a) and 301(a) of the CAA (42 U.S.C. 7414(a) and 7601(a)). Today's action is a final rulemaking under section 307(d) of the CAA (42 U.S.C. 7607(d)).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated:

Stephen L. Johnson

Administrator

For the reasons set out in the preamble, part 80 of title 40 Chapter I of the Code of Federal Regulations is amended as follows:

PART 80--REGULATION OF FUEL AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545, and 7601(a).

Subpart E - [Amended]

2. Section 80.91 is amended by revising paragraph (e)(2)(ii)(A) to read as follows:

§ 80.91 Individual baseline determination.

* * * * *

(e)* * *

(2)* * *

(ii)* * *

(A)(1) All gasoline produced to meet EPA's 1990 summertime volatility requirements shall be considered summer gasoline. All other gasoline shall be considered winter gasoline, except:

(2) Gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands that is subject to an approved petition under §80.93(d)(2) shall be considered summer gasoline for purposes of paragraph (e) of this section.

* * * * *

3. Section 80.93 is amended by revising paragraph (d) to read as follows:

§ 80.93 Individual baseline submission and approval.

* * * * *

(d) *Requirements for a petition applicable to gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.* (1)(i) Any refiner for any refinery or importer with gasoline produced or imported for use in Alaska in its individual 1990 baseline may petition EPA to establish a separate 1990 baseline for gasoline produced or imported for use in Alaska using the winter Complex Model, and to use the winter statutory baseline values under § 80.91(c)(5) for any gasoline produced or imported for use in Alaska which is in excess of the refinery's or importer's 1990 volume of gasoline produced or imported for use in Alaska for purposes of determining the refinery's or importer's compliance baseline under § 80.101(f)(4).

(ii) Any refiner for any refinery or importer with an individual 1990 baseline which did not include any gasoline produced or imported for use in Alaska in 1990 may petition EPA to establish the refinery's or importer's winter baseline values as the compliance baseline under §80.101(f)(3) for gasoline which the refiner or importer produces or imports for use in Alaska.

(iii) Any refiner for any refinery or importer subject only to the anti-dumping statutory baseline under § 80.91(c)(5) may petition EPA to have the winter statutory baseline values under § 80.91(c)(5) apply instead for purposes of determining the refinery's or importer's compliance baseline under § 80.101(f)(2) for gasoline which the refiner or importer produces or imports for use in Alaska.

(2)(i) Any refiner for any refinery or importer with gasoline produced or imported for use in Hawaii, and/or the Commonwealth of Puerto Rico, and/or the Virgin Islands in its individual 1990 baseline may petition EPA to establish a separate 1990 baseline for gasoline produced or imported for use in these areas using the summer Complex Model, and to use the summer statutory baseline values under § 80.91(c)(5) for any gasoline produced or imported for use in these areas in excess of the refinery's or importer's 1990 volume of gasoline produced or imported for use in these areas, for purposes of determining the refinery's or importer's compliance baseline under § 80.101(f)(4).

(ii) Any refiner for any refinery or importer with an individual 1990 baseline which did not include any gasoline produced or imported for use in Hawaii, and/or the Commonwealth of Puerto Rico, and/or the Virgin Islands in 1990 may petition EPA to establish the refinery's or importer's summer baseline values as the compliance baseline under § 80.101(f)(3) for gasoline which the refiner or importer produces or imports for use in these areas.

(iii) Any refiner or importer subject only to the anti-dumping statutory baseline under § 80.91(c)(5) may petition EPA to have the summer statutory baseline values under § 80.91(c)(5) apply instead for purposes of determining the refinery's or importer's compliance baseline under § 80.101(f)(2) for gasoline which the refiner or importer produces or imports for use in Hawaii, and/or the Commonwealth of Puerto Rico, and/or the Virgin Islands.

(iv) Any petition submitted in accordance with paragraphs (d)(2)(i), (d)(2)(ii) or (d)(2)(iii) of this section shall apply to gasoline produced or imported for use in all of the areas specified in the operative paragraphs.

(3) A petition under paragraphs (d)(1) or (d)(2) of this section must include the following:

(i) Identification of the refiner and refinery or importer;

(ii) EPA company and facility registration numbers issued under § 80.76;

(iii) Identification of a contact person; and

(iv) For petitions submitted under paragraphs (d)(1)(i) and (d)(2)(i) of this section:

(A) Revised 1990 individual baseline determination wherein the baseline for gasoline produced or imported for use in Alaska has been evaluated using the winter Complex Model, or gasoline produced or imported for use in Hawaii, and/or the Commonwealth of Puerto Rico, and/or the Virgin Islands has been evaluated using the summer Complex Model, as applicable, with the calculations clearly and fully described and displayed; and

(B) Revised 1990 individual baseline determination for gasoline in the refinery's or importer's original individual 1990 baseline which was not produced or imported for use in Alaska, and/or Hawaii, and/or the Commonwealth of Puerto Rico, and/or the Virgin Islands, as applicable, with the calculations clearly and fully described and displayed.

(C) Baseline auditor agreement with the revised baseline values.

(4) For U.S. Postal delivery, the petition shall be sent to: Attn: RFG Program, Mailstop 6406J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. For commercial delivery: Attn: RFG Program, 6th Floor (202-343-9038), U.S. Environmental Protection Agency, 1310 L St., N.W., Washington, D.C. 20005.

(5) EPA reserves the right to request additional information. If such information is not forthcoming in a timely manner, the petition will not be approved.

(6) A petition under this section may be submitted at any time during the annual averaging period. The baseline and compliance methods approved in a petition submitted under paragraph (d) of this section shall apply beginning with the annual averaging period in which the petition was approved and shall continue to apply in each annual averaging period thereafter. Once a petition has been approved under this section, the refiner or importer may not revert back to its original baseline.

(7) A refiner for any refinery or importer with an approved petition under paragraph (d)(1) of this section and an approved petition under paragraph (d)(2) of this section will be subject to a separate baseline and baseline volume for its gasoline produced or imported for use in Alaska, and a separate baseline and baseline volume for its gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico and the Virgin Islands.

(8)(i) Any refiner for any refinery or importer must have an approved petition under paragraph (d)(1) of this section in order to use the seasonal baseline and seasonal Complex Model, as provided in paragraph (d)(1) of this section, for gasoline produced or imported for use in Alaska.

(ii) Any refiner for any refinery or importer must have an approved petition under paragraph (d)(2) of this section in order to use the seasonal baseline and seasonal Complex Model, as provided in paragraph (d)(2) of this section, for gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

(iii) Any new refiner or importer without an individual anti-dumping baseline shall be subject to the annual average anti-dumping statutory baseline under §80.91(c)(5) unless the refiner or importer petitions for and receives approval of use of a seasonal baseline and seasonal Complex Model under this section.

(9)(i) The provisions of this paragraph (d) shall apply to any refiner, for any refinery, or importer that received approval of a petition under paragraph (d) of this section prior to [insert date 30 days after publication in the Federal Register] beginning with the 2008 annual averaging period

(ii) Any refiner, for any refinery, or importer that received approval of a petition under paragraph (d) of this section prior to [insert date 30 days after publication in the Federal Register] may petition EPA to withdraw such approval. Such petition must be submitted to EPA by December 31, 2007. A withdrawal of approval under this paragraph is effective beginning with the 2008 annual averaging period and shall remain in effect in each annual averaging period thereafter.

(iii) A refiner or importer with an approved withdrawal under paragraph (d)(9)(i) of this section will be subject to the baseline which was in effect prior to the effective date of the refiner's or importer's approved petition under paragraph (d) of this section. Once a refiner or importer receives approval of a withdrawal of a petition under paragraph (d)(9)(i) of this section

the refiner or importer is ineligible to receive approval of a change in baseline under this section.

4. Section 80.101 is amended by:

- a. Revising paragraph (f)(2);
- b. Adding paragraph (f)(3);
- c. Revising paragraph (f)(4)(iii);
- d. Revising paragraph (g)(1)(ii)(B), and adding paragraph (g)(1)(ii)(C);
- e. Revising paragraph (g)(2) introductory text, (g)(2)(i), and (g)(6), to read as

follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(f)* * *

(2)(i) In the case of any refiner for any refinery or importer for whom the anti-dumping statutory baseline applies under § 80.91, the anti-dumping statutory baseline for each parameter or emissions performance shall be the compliance baseline for that refinery or importer.

(ii) In the case of any refiner for any refinery or importer that has received approval of a petition submitted under § 80.93(d)(1)(iii), the compliance baseline for each emissions performance for that refinery or importer for gasoline produced or imported for use in Alaska shall be the winter statutory baseline value under § 80.45(b)(3), Table 5.

(iii) In the case of any refiner for any refinery or importer that has received approval of a petition submitted under § 80.93(d)(2)(iii), the compliance baseline for each emissions performance for that refinery or importer for gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and/or the Virgin Islands shall be:

(A) The summer statutory baseline value under § 80.45(b)(3), Table 5 for NO_x.

(B) The summer statutory baseline value under § 80.45(b)(3), Table 5 for Toxics less the corresponding value for Benzene under § 80.45(b)(3), Table 4.

(3) (i) In the case of any refiner for any refinery or importer that has received approval of a petition submitted under § 80.93(d)(1)(ii), the compliance baseline for each emissions performance for that refinery or importer for gasoline produced or imported for use in Alaska shall be the refinery's or importer's winter baseline value determined under § 80.91.

(ii) In the case of any refiner for any refinery or importer that has received approval of a petition submitted under § 80.93(d)(2)(ii), the compliance baseline for each emissions performance for that refinery or importer for gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and/or the Virgin Islands shall be the refinery's or importer's summer baseline value determined under § 80.91.

(4)* * *

(iii) Any refiner or importer with an individual baseline that has received approval of a petition submitted under § 80.93(d) and has produced or imported gasoline for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, or the Virgin Islands must calculate the compliance baseline for each parameter or emissions performance as follows:

$$CB_i = \frac{CB_{i,1} \times V_1 + CB_{i,2} \times V_2 + CB_{i,3} \times (V_3 - V_r)}{(V_1 + V_2 + V_3 - V_r)}$$

If $V_j \geq V_{1990j} > 0$:

$$CB_{i,j} = B_{i,j} \times \left(\frac{V_{1990j}}{V_j} \right) + DB_{i,j} \times \left(1 - \frac{V_{1990j}}{V_j} \right)$$

If $V_j < V_{1990j}$ or $V_{1990j} = 0$: $CB_{i,j} = B_{i,j}$

Where:

CB_i = The compliance baseline for parameter or emissions performance i

$CB_{i,j}$ = The compliance baseline for parameter or emissions performance i applicable to the conventional gasoline in production volume V_j

j is a subscript identifying a portion of gasoline and RBOB produced or imported as follows:

j=1: Conventional gasoline supplied to Hawaii, the Commonwealth of Puerto Rico and the Virgin Islands, if gasoline supplied to these areas is covered by a petition for a separate baseline

j=2: Conventional gasoline supplied to Alaska, if gasoline supplied to this area is covered by a petition for a separate baseline.

j=3: Conventional gasoline, reformulated gasoline, RBOB and California gasoline produced or imported by a refiner or importer, and not included in portions 1 or 2.

V_j = The averaging period volume for portion j.

V_r = The volume of reformulated gasoline, RBOB and California gasoline included in V_3 .

$B_{i,j}$ = The refiner/importer's individual baseline for parameter or emissions performance i applicable to the conventional gasoline in portion j, or the applicable statutory baseline if assigned in lieu of an individual baseline.

$DB_{i,j}$ = The statutory baseline for parameter or emissions performance i applicable to the conventional gasoline in portion j (i.e., the annual or seasonal statutory baseline).

V_{1990j} = The 1990 baseline volume applicable to portion j.

(g)* * *

(1)* * *

(ii)* * *

(B) Any refiner for any refinery or importer that has received EPA approval of a petition

submitted in accordance with the provisions of § 80.93(d)(1) must use the applicable winter complex model under § 80.45, using an RVP of 8.7 psi, to evaluate its averaging period gasoline produced or imported for use in Alaska.

(C) Any refiner for any refinery or importer that has received EPA approval of a petition submitted in accordance with the provisions of § 80.93(d)(2) must use the applicable summer complex model under § 80.45 to evaluate its averaging period gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

(2) In the case of any refiner or importer subject to the anti-dumping statutory baseline, the summer statutory baseline and/or the winter statutory baseline, the refiner or importer shall determine compliance using the following methodology:

(i) Calculate the compliance total for the averaging period for sulfur, T-90, olefins, exhaust benzene emissions, exhaust toxics and exhaust NO_x emissions, as applicable, based upon the anti-dumping statutory baseline value, the summer statutory baseline value, or the winter statutory baseline value, as applicable, for that parameter using the formula specified at 80.67.

* * * * *

(6)(i) The emissions performance of gasoline that has an RVP greater than the RVP required under § 80.27 (“winter gasoline”) shall be determined using the applicable winter complex model under § 80.45, using an RVP of 8.7 psi for compliance calculation purposes under this subpart E.

(ii) Except as provided in paragraph (g)(1)(ii) of this section, the emissions performance of gasoline produced or imported for use in areas that are not subject to the requirements of §

80.27 shall be determined using the applicable winter complex model under § 80.45, using an RVP of 8.7 psi for compliance calculation purposes under this subpart E.

* * * * *

5. Section 80.104 is amended by adding paragraph (a)(2)(xiii) to read as follows:

§ 80.104 Recordkeeping requirements.

* * * * *

(a)* * *

(2)* * *

(xiii) In the case of gasoline subject to an approved petition under § 80.93(d), documents that reflect that the gasoline was produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands, as applicable.

* * * * *

Subpart J - [Amended]

6. Section 80.825 is amended by revising paragraph (c)(2) to read as follows:

§ 80.825 How is the refinery or importer annual average toxics value determined?

* * * * *

(c) * * *

(2) (i) The toxics value, T_i , of each batch of conventional gasoline, and the annual average toxics value, T_a , for conventional gasoline under this subpart are in milligrams per mile (mg/mile) and volumes are in gallons.

(ii) Any refiner for any refinery or importer that has received EPA approval of a petition submitted in accordance with the provisions of § 80.93(d) shall determine the toxics value, T_i , of each batch of conventional gasoline produced or imported for use in Alaska, and/or Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands in accordance with § 80.101(g)(1)(ii).

* * * * *

7. Section 80.850 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 80.850 How is the compliance baseline determined?

* * * * *

(c) Any refiner for any refinery or importer with an approved anti-dumping baseline under § 80.93(d) for gasoline produced or imported for use in Alaska, and/or Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands, and for which a conventional gasoline baseline toxics value for such gasoline can be determined according to § 80.915(b)(1), shall

determine its compliance baseline applicable to such gasoline according to the following equation:

$$T_{CBase} = \frac{T_{Base} \times V_{Base} + T_{Exist} \times V_{Inc} + T_{SBase} \times V_{SBase} + T_{SExist} \times V_{SInc} + T_{WBase} \times V_{WBase} + T_{WEexist} \times V_{WInc}}{V_{Base} + V_{Inc} + V_{SBase} + V_{SInc} + V_{WBase} + V_{WInc}}$$

Where:

T_{CBase} = Compliance baseline toxics value.

T_{Base} = Baseline toxics value for the refinery or importer, calculated according to § 80.915(b)(1) for all gasoline except gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

V_{Base} = Baseline volume for the refinery or importer, calculated according to § 80.915(b)(2) for all gasoline except gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

T_{Exist} = The refinery's or importer's anti-dumping compliance baseline value for exhaust toxics, in mg/mi, per § 80.101(f) for all gasoline except gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

V_{Inc} = Volume of gasoline produced or imported, excluding the volume of gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands during the averaging period, which is in excess of V_{Base}

T_{SBase} = Baseline toxics value for the refinery or importer, calculated according to § 80.915(e)(2)(i) for gasoline produce or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

V_{SBase} = Baseline volume for the refinery or importer, calculated according to § 80.915(e)(2)(ii) for gasoline produce or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

T_{SExist} = The refinery's or importer's anti-dumping compliance baseline value for exhaust toxics, in mg/mi, per § 80.101(f) for gasoline produce or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

V_{SInc} = Volume of gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands during the averaging period which is in excess of V_{SBase}

T_{WBase} = Baseline toxics value for the refinery or importer, calculated according to § 80.915(e)(1)(i) for gasoline produce or imported for use in Alaska.

V_{WBase} = Baseline volume for the refinery or importer, calculated according to § 80.915(e)(1)(ii) for gasoline produce or imported for use in Alaska.

$T_{W\text{Exist}}$ = The refinery's or importer's anti-dumping compliance baseline value for exhaust toxics, in mg/mi, per § 80.101(f) for gasoline produce or imported for use in Alaska.

$V_{W\text{Inc}}$ = Volume of gasoline produced or imported for use in Alaska during the averaging period which is in excess of $V_{W\text{Base}}$

(d) If the refinery or importer produced less gasoline during the compliance period than its applicable baseline volume, the value of V_{inc} , $V_{S\text{Inc}}$ or $V_{W\text{Inc}}$, as applicable, will be zero.

8. Section 80.855 is amended by adding paragraph (b)(2) to read as follows:

§ 80.855 What is the compliance baseline for refineries or importers with insufficient data?

* * * * *

(b) * * *

(2)(i) A refinery or importer that has an approved anti-dumping baseline under § 80.93(d) for gasoline produced or imported for use in Alaska, and that cannot determine an applicable toxics value according to paragraph (b)(1) of this section, shall have the following as its compliance baseline for the purposes of this subpart: 110.72 mg/mile.

(ii) A refinery or importer that has an approved anti-dumping baseline under § 80.93(d) for gasoline produce or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the

Virgin Islands and that cannot determine an applicable toxics value according to paragraph (b)(1) of this section, shall have the following as its compliance baseline for the purposes of this subpart: 77.82 mg/mile.

(iii) The provisions of this paragraph (b)(2) shall apply to any refiner, for any refinery, or importer that received approval of a petition under § 80.93(d) prior to [insert date 30 days after publication in the Federal Register] beginning with the 2008 annual averaging period.

(iv) Any new refiner or importer without a toxics baseline that produces or imports gasoline for use in Alaska, Hawaii, the Commonwealth of Puerto Rico or the Virgin Islands shall be subject to the applicable toxics default baseline under this paragraph (b)(1) of this section unless the refiner or importer petitions for and receives approval of use of a seasonal baseline and seasonal Complex Model under §80.93(d).

* * * * *

9. Section 80.910 is amended by revising paragraph (a) to read as follows:

§ 80.910 How does a refiner or importer apply for a toxics baseline?

(a)(1) A refiner or importer shall submit an application to EPA which includes the information required under paragraph (c) of this section no later than June 30, 2001, or 3 months prior to the first introduction of gasoline into commerce from the refinery or by the importer, whichever is later.

(2) A refiner or importer shall submit an application to EPA for the purposes of this subpart simultaneously with the submission of a petition under § 80.93(d).

* * * * *

10. Section 80.915 is amended by redesignating paragraphs (e) through (h) as paragraphs (f) through (i) and adding new paragraph (e) to read as follows:

§ 80.915 How are the baseline toxics value and baseline toxics volume determined?

* * * * *

(e)(1)(i) A refiner or importer which is approved for a petition submitted under § 80.910(a)(2) for gasoline produced or imported for use in Alaska shall calculate the applicable toxics baseline value using the following equation:

$$T_{WBase} = \frac{\sum_{i=1}^n (V_i \times T_i)}{\sum_{i=1}^n V_i} + M$$

Where:

T_{WBase} = Baseline toxics value for gasoline produced or imported for use in Alaska.

V_i = Volume of gasoline batch i produced or imported for use in Alaska between January 1, 1998 and December 31, 2000, inclusive.

T_i = Toxics value of gasoline batch i produced or imported for use in Alaska between January 1, 1998 and December 31, 2000, inclusive.

i = Individual batch of gasoline produced or imported for use in Alaska between January 1, 1998 and December 31, 2000, inclusive.

n = Total number of batches of gasoline produced or imported for use in Alaska between January 1, 1998 and December 31, 2000, inclusive.

M = Compliance margin.

(ii) The baseline volume associated with the baseline value calculated in paragraph (e)(1)(i) of this section shall be calculated using the methodology in paragraph (b)(2) of this section for the gasoline described in paragraph (e)(1)(i) of this section.

(2)(i) A refiner or importer which is approved for a petition submitted under § 80.910(a)(2) for gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands shall calculate the applicable toxics baseline value using the following equation:

$$T_{SBase} = \frac{\sum_{i=1}^n (V_i \times T_i)}{\sum_{i=1}^n V_i} + M$$

Where:

T_{SBase} = Baseline toxics value for gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

V_i = Volume of gasoline batch i produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands between January 1, 1998 and December 31, 2000, inclusive.

T_i = Toxics value of gasoline batch i produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands between January 1, 1998 and December 31, 2000, inclusive.

i = Individual batch of gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands between January 1, 1998 and December 31, 2000, inclusive.

n = Total number of batches of gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands between January 1, 1998 and December 31, 2000, inclusive.

M = Compliance margin.

(ii) The baseline volume associated with the baseline value calculated in paragraph (e)(2)(i) of this section shall be calculated using the methodology in paragraph (b)(2) of this section for the gasoline described in paragraph (e)(2)(i) of this section.

* * * * *